

HOUSE BILL No. 1310

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1-5.

Synopsis: Attestation/self-proving clause. Specifies that a will may be executed, attested, and made self-proving by including in the will a self-proving clause signed by the testator and witnesses. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2003.

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January 13, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1310

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-5-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) ~~The execution of This section~~
3 **applies to a will executed before, on, or after July 1, 2003.** A will,
4 other than a nuncupative will, ~~must~~ **may** be **attested** by the signature
5 of the testator and of at least two (2) witnesses ~~as follows: on one (1)~~
6 **of the following:**

7 **(1) An attestation clause under subsection (b).**

8 **(2) A self-proving clause under section 3.1(c) of this chapter.**

9 **(3) A self-proving clause under section 3.1(d) of this chapter.**

10 **(b) A will may be attested as follows:**

11 (1) The testator, in the presence of two (2) or more attesting
12 witnesses, shall signify to ~~them~~ **the witnesses** that the instrument
13 is the testator's will and either:

14 (A) sign the will;

15 (B) acknowledge the testator's signature already made; or

16 (C) at the testator's direction and in the testator's presence have
17 someone else sign the testator's name.



(2) The attesting witnesses must sign in the presence of the testator and each other.

(b) An attested will may at the time of its execution or at any subsequent date be made self-proved by the acknowledgment of the will by the testator and the verifications of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses attached or annexed to the will in form and content substantially as follows:

UNDER PENALTIES FOR PERJURY, we, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument declare:

(1) that the testator executed the instrument as the testator's will;
 (2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed another to sign for the testator in the testator's presence;

(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;

(5) that the testator was of sound mind when the will was executed; and

(6) that to the best knowledge of each of the witnesses the testator was, at the time the will was executed, eighteen (18) or more years of age or was a member of the armed forces or of the merchant marine of the United States or its allies:

 Testator

 Date

 Witness

 Witness

(c) Subject to the applicable Indiana Rules of Trial Procedure, a videotape may be admissible as evidence of the following:

(1) The proper execution of a will;

(2) The intentions of a testator;

(3) The mental state or capacity of a testator;

(4) The authenticity of a will;

(5) Matters that are determined by a court to be relevant to the probate of a will:

(d) This subsection applies to all wills, regardless of the date a will is executed. A will is presumed to be self-proved if the will includes an attestation clause signed by the witnesses that indicates that:



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- (1) The testator signified that the instrument is the testator's will;
 (2) in the presence of at least two (2) witnesses; the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;
 (3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;
 (4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;
 (5) the testator was of sound mind when the will was executed; and
 (6) the testator is, to the best of the knowledge of each of the witnesses, either:
 (A) at least eighteen (18) years of age; or
 (B) a member of the armed forces or the merchant marine of the United States or its allies.

SECTION 2. IC 29-1-5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 3.1. (a) This section applies to a will executed before, on, or after July 1, 2003. When a will is executed, the will may be:**
 (1) attested; and
 (2) made self-proving;
 by incorporating into or attaching to the will a self-proving clause that meets the requirements of subsection (c) or (d). If the testator and witnesses sign a self-proving clause that meets the requirements of subsection (c) or (d) at the time the will is executed, an attestation clause signed by the testator and witnesses under section 3(b) of this chapter is not required.

(b) If a will is executed by the signatures of the testator and witnesses on an attestation clause under section 3(b) of this chapter, the will may be made self-proving at a later date by attaching to the will a self-proving clause signed by the testator and witnesses that meets the requirements of subsection (c) or (d).

(c) A self-proving clause must contain the acknowledgment of the will by the testator and the verifications of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses attached or annexed to the will in form and content substantially as follows:

UNDER PENALTIES FOR PERJURY, we, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument, declare:



(1) that the testator executed the instrument as the testator's will;

(2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed another to sign for the testator in the testator's presence;

(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;

(5) that the testator was of sound mind when the will was executed; and

(6) that, to the best knowledge of each of the witnesses, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

Testator

Date

Witness

Witness

(d) A will is attested and self-proved if the will includes or has attached a clause signed by the testator and the witnesses that indicates that:

(1) the testator signified that the instrument is the testator's will;

(2) in the presence of at least two (2) witnesses, the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;

(3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;

(4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;

(5) the testator was of sound mind when the will was executed; and

(6) the testator is, to the best of the knowledge of each of the witnesses, either:

(A) at least eighteen (18) years of age; or

(B) a member of the armed forces or the merchant marine



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1 of the United States or its allies.

2 SECTION 3. IC 29-1-5-3.2 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2003]: **Sec. 3.2. Subject to the applicable Indiana Rules of Trial
5 Procedure, a videotape may be admissible as evidence of the
6 following:**

7 (1) **The proper execution of a will.**

8 (2) **The intentions of a testator.**

9 (3) **The mental state or capacity of a testator.**

10 (4) **The authenticity of a will.**

11 (5) **Matters that are determined by a court to be relevant to
12 the probate of a will.**

13 SECTION 4. IC 29-1-5-6 IS AMENDED TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2003]: Sec. 6. No will in writing, nor any part
15 thereof, except as in this article provided, shall be revoked, unless the
16 testator, or some other person in his presence and by his direction, with
17 intent to revoke, shall destroy or mutilate the same; or such testator
18 shall execute other writing for that purpose, signed, subscribed and
19 attested as required in section 3 **or 3.1** of this chapter. A will can be
20 revoked in part only by the execution of a writing as herein provided.
21 And if, after the making of any will, the testator shall execute a second,
22 a revocation of the second shall not revive the first will, unless it shall
23 appear by the terms of such revocation to have been his intent to revive
24 it, or, unless, after such revocation, he shall duly republish the previous
25 will.

26 SECTION 5. IC 29-1-5-9 IS AMENDED TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2003]: Sec. 9. An instrument creating an inter
28 vivos trust in order to be valid need not be executed as a testamentary
29 instrument pursuant to section 3 **or 3.1** of this chapter, even though
30 such trust instrument reserves to the maker or settlor the power to
31 revoke, or the power to alter or amend, or the power to control
32 investments, or the power to consume the principal, or because it
33 reserves to the maker or settlor any one or more of said powers.

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